

Project No: 8162

Project Name: MILPITAS LIBRARY PROJECT

**AMENDMENT TO AGREEMENT NO.3**  
**FOR CONSULTATION AND OTHER SERVICES**

This Amendment is entered into this 19th Day of December 2006, by and between the City of Milpitas Redevelopment Agency, a public agency (hereafter referred to as "CITY") and GROUP 4 ARCHITECTURE, RESEARCH + PLANNING, INC. (hereafter referred to as "CONSULTANT") and together the "Parties".

**RECITALS**

WHEREAS, the parties entered into an Agreement for professional design services on August 9, 2004, for the Milpitas Public Library (Project No. 8162) with a total compensation for Basic Services, Additional Services, Reimbursable Services, and Contingency not to exceed \$3,474,000.00 on August 5, 2004.

WHEREAS, the parties entered into an Amendment Agreement to allow CONSULTANT to provide an expansion of their professional liability insurance coverage (E&O), including tail coverage until 2010 with additional premium costs to be paid by the City, and to provide additional project design coordination between the Library and Midtown East Parking Garage for a not to exceed amount of \$164,000.00 on June 21, 2005.

WHEREAS, the parties entered into an Amendment Agreement to allow CONSULTANT to provide an expansion of their professional services to perform energy re-analysis for the proposed new Library building and generate new Title 24 compliance forms to address the recently adopted new California Energy Code for a not to exceed amount of \$2,213.00 on April 3, 2006.

WHEREAS, the parties now desire to amend the Agreement to allow CONSULTANT to provide an expansion of their professional service to perform Construction Services for the New Library Project as outlined in Exhibit "A-3" for a not to exceed amount of \$1,190,000.00.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 1, entitled "Construction Services" is amended by adding Exhibit "A-3" which are attached hereto and incorporated by reference herein.
2. Section 2, entitled "Compensation" is amended to add the following:

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The compensation for the Construction Services, Section 6, 7, and 8, services set forth in Exhibit "**B-3**" is a "not to exceed" amount. The total maximum amount of compensation to be paid for tasks outlined in Exhibit "**B-3**" shall be \$1,190,000.00.

3. Section 6, 7, & 8 comprise Construction Services are added by Exhibit "**A-3**" which are attached hereto and incorporated by reference herein. The total maximum amount of compensation to be paid for tasks outline In Exhibit "**B-3**" shall be **\$1,190,000.00**.

All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date written above.

APPROVED BY:

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
CIP Manager as to content

\_\_\_\_\_  
City Manager / RDA Executive Director

\_\_\_\_\_  
City Attorney as to Form

ATTESTED BY:

\_\_\_\_\_  
Mary Lavelle, City Clerk

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## **Exhibit A-3 Construction Services**

### **GENERAL INFORMATION:**

This amendment for construction services is made a part of the contract between the Milpitas Redevelopment Agency (CITY) and Group 4 Architecture, Research + Planning (CONSULTANT). All services described in Part 1 Design and Bidding Services are to be provided and paid for under the lump sum fee for those services. The fee for Part 2 Construction Services shall not be used for completion of the Part 1 Design and Bidding Services.

Part 2 Construction Administration Services shall be divided into 3 Tasks:

Task 6, Construction Administration;

Task 7, Project Closeout; and

Task 8, End of Warranty Review.

The fees for these service shall be as shown in the attached Construction Services Fee Schedule.

The terms City, CITY, or Agency shall also mean the Milpitas Redevelopment Agency and the City of Milpitas. The term CONSULTANT shall also mean each sub-consultant for the various disciplines, as necessary to represent their portions of the work.

### **TASK #6: CONSTRUCTION ADMINISTRATION**

- 6.1 CONSULTANT shall coordinate all of its construction administration services with CITY'S construction management, who will be responsible for the management of the construction project. The CONSULTANT shall provide administrative services as set forth below. Consultant has prepared and reviewed the construction bid documents. This scope was prepared with the knowledge of those documents.
- 6.2 CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction to the construction contractor and terminates

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at the conclusion of the one year General Contractor's warranty periods for the contractor's work.

- a. Task 6, the Construction Administration Phase, will commence upon the CITY's Award of the Contract for Construction and will end 610 calendar days from Notice to Proceed date or on the initial Date of Substantial Completion stipulated in the City-Contractor Agreement, whichever comes first. CONSULTANT services between the initially stipulated date of Substantial Completion and the actual date of Substantial Completion will be provided as an Additional Service on a Time & Materials basis, unless the CONSULTANT caused the delays. CONSULTANT shall continue to provide Construction Administration services until the actual date of substantial completion at no additional cost to CITY for as many days of delay, if any, that were caused by CONSULTANT and that can be demonstrated by the Construction schedule.
- b. Task 7, Project Closeout, will commence on the actual date of Substantial Completion, mutually determined by CONSULTANT, CITY and Construction Manager, and will end 90 calendar days from that date. CONSULTANT shall complete all items over which the CONSULTANT has control indicated in the scope of Project Closeout within the 90 calendar day period. CONSULTANT Closeout Services after 90 days will be provided as an Additional Service on a Time & Materials basis.
- c. Task 8, End of Warranty Review, will commence 45 days prior to the termination of the General Contractor's Warranty and will terminate upon completion of the CONSULTANT's report. CONSULTANT's report shall be submitted in draft form, subject to review by the CITY and final form at least 30 days prior to the termination of the General Contractor's Warranty

6.3 CONSULTANT shall advise and consult with the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have the authority to act on behalf of the CITY only to the extent provided in this Agreement or any properly executed amendment to this Agreement. CONSULTANT's services are for the benefit of CITY. In dealing with the Contractor and Project Manager CONSULTANT has a responsibility to help protect the CITY's interests.

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- 6.4 Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 6 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.
- 6.5 CONSULTANT shall review all requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information ("RFI") about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.6 CONSULTANT shall respond in writing to all RFI's in accordance with the contract for construction, allowing for the CITY's time to process information and forward it to the Contractor. CONSULTANT shall, with the CITY's construction manager and Contractor, prioritize responses to RFIs during weekly meetings to provide information to the contractor in a timely manner intended to avoid delays. Lacking other than priorities established at weekly meetings, and to the extent necessary to avoid delay in the critical path, CONSULTANT shall provide; 3 working day responses to "rush RFI's"; 14 calendar day responses to other lead RFI's.
- 6.7 If deemed appropriate by the CONSULTANT and upon CITY'S approval, the CONSULTANT shall on the CITY'S behalf, prepare, reproduce and distribute supplemental specific Drawings or Specifications in response to requests for information by the Contractor. If the CONSULTANT's response to an RFI leads to inconsistencies with, and/or errors or omissions in, other parts of the design, plans and/or specifications, then CONSULTANT shall refer to and correct those inconsistencies in the RFI response. Should the number of RFI responses be high enough that it would likely lead to confusion or misunderstanding by the contractor, then CITY may require CONSULTANT to prepare updated plans and/or specifications that incorporate the RFI responses and eliminate the inconsistencies, errors and omissions. If certain sheets become difficult to read or confusing, due to revisions or supplemental sketches, at CITY's request, CONSULTANT shall reissue revised drawings, incorporating all RFI's, sketches, drawing revisions, and changes, once per sheet, during the construction of the project. This additional re-

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issuance of drawings is in addition to providing the Conformed set of documents after bidding and prior to construction, and the Record set of documents after substantial completion. CITY shall pay for costs of plotting and reproduction.

- 6.8 CONSULTANT shall interpret matters concerning performance of the Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made to CITY in writing with reasonable promptness.
- 6.9 Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents. However, the CITY shall make the final determination regarding all such matters.
- 6.10 CONSULTANT shall attend and participate in weekly construction meetings to review RFI's, potential change orders, change orders, submittal status, and the progress of construction. CONSULTANT shall make timely site visits for observation of field tests, mock ups, equipment performance tests, startup and checkout of specialized systems, and provide approvals required by the Architect, as specified in the Construction Documents. CONSULTANT shall be available to provide daily project site visits, during critical stages of the construction.
- 6.11 CONSULTANT shall visit the site weekly or at intervals appropriate to the stage of the Contractor's operations and coordinate visits with the CITY'S Construction Manager, or as otherwise agreed in order:
  - a. To become generally familiar with and to keep the CITY informed about the progress and quality of the portion of the Work completed.
  - b. To notify the CITY of observed defects and deficiencies in the Work, and,
  - c. To determine in general if the visually observable Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.
  - d. CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. CONSULTANT shall communicate with the CITY's quality

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control inspector(s) to generally review the conformity of the construction with the plans and design intent.

- e. CONSULTANT shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction.
  - f. CONSULTANT shall provide periodic reviews by Geotechnical, Structural, Mechanical, Electrical, Plumbing, Elevator, and other trade subconsultants, as necessary to review the work in progress. Geotechnical review shall include review of subgrades to receive structural work. Structural review shall include review of each type of structural element periodically or as required by the City's Building Department. Mechanical, Electrical, and Plumbing review shall include general review of these systems.
  - g. CONSULTANT shall provide commissioning and Title 24 Energy Efficiency review of all operational systems, described in the attached proposal for Commissioning and Title 24 Energy Efficiency review.
  - h. CONSULTANT shall participate and assist with the design coordination of the Mechanical, Electrical, or Plumbing design/build systems. These systems include: the fire sprinkler system; in-floor radiant heating (in the Courtyard area); and portions of the refrigerant and heating system for the HVAC. CONSULTANT shall assist the Contractor in resolving conflicts between the Mechanical, Electrical, and Plumbing systems and the Architectural plans, without relieving the Contractor of its responsibilities under its construction contract with the CITY. CONSULTANT shall review and take action on shop drawings and submittals for design-build system, prior to the contractor submitting such information for building permits.
- 6.12 The CONSULTANT shall report to the CITY observed or otherwise known deviations from the Contract Documents
- 6.13 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.
- 6.14 The CONSULTANT shall advise the CITY if the CONSULTANT identifies work that does not conform to the Contract Documents.

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### 6.15 SUBMITTALS:

- a. The CONSULTANT shall review and take appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, Mock Ups and Samples in accordance with the Contract for Construction for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such reasonable promptness as to cause no delay to the Work or in the activities of the CITY, Contractor or separate contractors, while allowing sufficient time in the CONSULTANT's professional judgment to permit adequate review. Review of Contractor submittals relies upon the Contractor's representation of the accuracy and completeness of the submittal. CONSULTANT'S review and action on such submittals shall not relieve or diminish the Contractor's primary responsibility. If CONSULTANT finds missing or incorrect information in the submittal, CONSULTANT shall indicate such remarks on the submittal. CONSULTANT shall, with the CITY's construction manager and Contractor, prioritize responses to Submittals during weekly meetings to provide information to the contractor in a timely manner intended to avoid delays. Lacking other priorities established at weekly meetings, and to the extent necessary to avoid delay in the critical path, CONSULTANT shall provide responses within 14 calendar days for submittals.
- b. The CONSULTANT shall enter information on submittals into Constructware (or other construction management software) when received and as soon as action has been taken.
- c. If in the event that professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's wet stamp and signature when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy



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and completeness of the services, certifications or approvals performed by such design professionals

- d. CONSULTANT shall, with the CITY's Construction Manager, review the submittal list and submittals schedule provided by the contractor and provide comments thereon.

### 6.16 CHANGE ORDERS:

- a. The CONSULTANT shall assist the CITY'S Project Manger in the preparation of Change Orders and Construction Change Directives for the CITY'S approval and execution in accordance with the Contract Documents. If necessary, the CONSULTANT shall prepare, submit to CITY for approval, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in this Section 6.15, Paragraph B.
- b. The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract price or time of completion. A properly prepared request for a change in the Work shall be accompanied by sufficient Contractor provided supporting data and information to permit the CONSULTANT to make a reasonable recommendation to CITY without extensive investigation or preparation of additional drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the CONSULTANT may recommend to the CITY that the requested change be denied.
- c. If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall consider entitlement under the construction contract and assist the CITY in estimation or evaluation of any additional costs attributable to a Change. With the CITY'S approval, the CONSULTANT shall assist the CITY to incorporate those changes into a Change Order or other appropriate

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documentation for the CITY'S execution or negotiation with the Contractor.

- d. The CONSULTANT shall maintain all records relative to changes in the Work.

6.17 Upon completion, CONSULTANT shall provide copies of the updated electronic documents to the Contractor, for use in preparing Contractor's record documents.

6.18 SCHEDULE OF SERVICES:

- a. CONSULTANT shall provide the following Contract Administration services. Any services not described below shall be designated as Additional Services for which CONSULTANT shall be paid according to Sections 2.4 and 2.9 of the Agreement:
- b. Up to two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal to the Contractor. CONSULTANT shall also provide a third review of some submittals (up to 15%), as necessary.
- c. Up to 120 visits to the site by the CONSULTANT over the duration of the Project during construction. CONSULTANT will visit the site to observe portions of the Work to determine whether such portions of the Work are substantially complete in accordance with the requirements of the Contract Documents. CONSULTANT shall visit the site an additional ten (10) times to prepare and track the punch list, and to determine final completion.
- d. CONSULTANT shall also provide Geotechnical review, observation and testing. Geotechnical tests include performing and reporting on compaction of sub-grade and aggregate base, and trench backfill to verify compliance with the plans and specifications and the recommendations of the Geotechnical report. Compaction tests shall include preliminary work necessary to calibrate the instruments to the site conditions, daily field reports and certified completion reports, and associated work.
- e. Up to ten (10) additional site visits for observation for any post-occupancy portion of the Work to determine final completion, and the provision of warrantee items once Contractor, with approval of the CITY, has determined the Project is completed.

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- f. CONSULTANT, including each major sub-consultant shall attend the pre-construction meeting.
- g. CONSULTANT shall participate with the CITY's Construction Manager in review of the construction schedule and progress construction schedules. CONSULTANT shall provide the CITY with a monthly report on the logistics of the construction schedules, advising the CITY of any sequencing issues or long lead items that need consideration in the schedules.
- h. CONSULTANT shall provide a monthly report which will include, at a minimum the status of: construction progress and schedule; Architect's Supplemental Information, RFI's, Submittals, and shop drawings; potential change orders, change orders and revisions; MEP coordination; field observations including quality and acceptance recommendation of construction work, and other pertinent information.
- i. CONSULTANT shall observe the updating and maintenance of the as-built drawings by the Contractor, as required in the Construction Documents. CONSULTANT shall review the as-built drawings at least monthly, for completeness and accuracy, known to the CONSULTANT. CONSULTANT's as-built review shall include and be based upon a walk-through review with the Contractor and the CITY. CONSULTANT shall inform the CITY if they become aware that the As-built drawings are not being kept up and maintained up to date by the Contractor in accordance with the Contract Documents, so that the CITY may consider it in determining payment to the Contractor. CONSULTANT understands that they will rely upon the contractors' as-built drawings, in order to produce and deliver Record Drawings to the CITY.
- j. Additional sketches and information, provided by the CONSULTANT, may be needed to clarify the bid documents and design intent, which are a normal part of Construction Services. Additional design work, other than clarifications and minor corrections that are necessary due to errors or omissions, which exceed the provisions of the design contract, and therefore were already paid for, shall be done by CONSULTANT but are not further compensable under the

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construction services fee.

## **TASK #7: RECORD DOCUMENTS AND PROJECT CLOSEOUT**

- 7.1 CONSULTANT shall review contractor-supplied operation and maintenance manuals for conformance with the Contract Documents.
- 7.2 CONSULTANT shall review contractor warranties for conformance with the Contract Documents.
- 7.3 CONSULTANT shall review the progress of the work, and with the CITY's construction manager, provide expediting lists of work to be completed to achieve substantial completion. CONSULTANT shall conduct an expediting list walk-through with the CITY and Contractor to discuss items on the expediting list, with follow-up reviews to evaluate progress of completion of the expediting-list as necessary.
- 7.4 CONSULTANT shall review the work at the time of substantial completion and provide a comprehensive punch-list of items to be completed to achieve final completion. CONSULTANT shall conduct a punch list walk-through with the CITY and Contractor to discuss items on the punch list, with follow-up reviews to evaluate progress of completion of the punch-list as necessary.
- 7.5 The CONSULTANT shall conduct observations to determine the actual date of final completion; shall review: written warranties, operations and maintenance manuals, as-built documents, and related documents required by the Contract Documents and assembled by the Contractor; and shall provide a written report to the CITY regarding the completeness and appropriateness of the Construction Final Certificate for Payment based upon a final observation indicating the Work complies in general with the requirements of the Contract Documents.
- 7.6 The CONSULTANT'S observation for Final Completion shall be conducted with the CITY'S Designated Representative to check for general conformance of the Work with the requirements of the Contract Documents package and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.
- 7.7 PROJECT COMPLETION:  
CONSULTANT shall incorporate "as-built" information provided by the Contractor and information gained during site visits throughout the Project

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construction, and prepare record drawings and specifications based on record field construction documents package. Prior to acceptance of the Project by the CITY, CONSULTANT shall review the contractor's "as-built" drawings and specifications, and shall return them to contractor for revision if they are not complete, or otherwise known to not represent facts known to the CONSULTANT. Apart from reviewing Contractor's as-builts documents, CONSULTANT shall prepare and sign the CONSULTANT'S Record Drawings submit both a hard copy on Mylar and an electronic copy on Compact Disc (CD) to the CITY within 25 days

### **7.8 FACILITY OPERATION SERVICES:**

The CONSULTANT shall request that the Contractor and its designated subcontractors meet with the CITY or the CITY'S Designated Representative before or promptly after occupancy to review the facility operation services, such as HVAC, electrical and any other building systems. The CONSULTANT and its subconsultants shall attend the meeting, and provide consultation and written recommendations.

### **7.9 COMMISSIONING & TITLE 24 REVIEW**

- a. CONSULTANT shall, with its subconsultants, the Contractor and CITY personnel, conduct review and testing of all functional systems. Each system shall be demonstrated by the Contractor, with direction from the CONSULTANT, to show operation under several expected and normal conditions. CONSULTANT shall provide a written report indicating any deficiencies for correction by the Contractor. After correction by contractor, and final review and testing by CONSULTANT, CONSULTANT shall provide a final written report on the tests performed and results of the operational review.
- b. CONSULTANT shall similarly conduct review and tests of Title 24 Energy Efficiency systems and shall provide written reports.

## **TASK #8: END OF WARRANTY REVIEW**

- 8.1 Prior to the expiration of the one year General Contractor's, CONSULTANT shall perform a review of the work subject to each warranty and guarantee. CONSULTANT shall timely report any defective materials or workmanship to

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the CITY so that the CITY may make timely demand to the contractor to repair the defects.

- 8.2 CONSULTANT shall schedule a field review with the CITY and Library operator. CONSULTANT shall review the building and operational systems.
- 8.3 CONSULTANT shall provide and written report, listing any repairs, corrections or other work required of the contractor to comply with warranties and guarantees.
- 8.4 CONSULTANT shall schedule and provide a field review with Contractor, CITY and Library operator to discuss items of work for contractor, and follow-up with and completion review after Contractor has performed the work.

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## Exhibit B-3 Compensation for Construction Services

### Part 2 Construction Administration Services

Task 6, Construction Administration;	\$830,000
Task 7, Project Closeout; and	\$230,000
Task 8, End of Warranty Review.	\$ 30,000
Construction Admin. Serv. Contingency	\$100,000
<b>Total Construction Administration Services</b>	<b>\$1,190,000</b>